NED V. SCOTT, JR.

IBLA 81-599 Decided January 4, 1982

Appeal from decisions of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. AMC 17761 through AMC 17769.

Reversed.

1. Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work

   Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

APPEARANCES: Ned V. Scott, Jr., pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Ned V. Scott, Jr., has appealed from two decisions of the Arizona State Office, Bureau of Land Management (BLM), declaring four lode mining claims, designated the Longhorn Nos. 1 through 4, and amended as the Longhorn Perlite Nos. 1 through 4 (AMC 17761 through AMC 17768), 1/ and one placer mining claim, the Big Orange Perlite mining claim (AMC 17769), abandoned and void for failure to file on or before December 30, 1978, evidence of assessment work performed on the claims during the 1977-1978 assessment year.

The five mining claims were located in 1971. Copies of the location notices were filed with BLM on December 12, 1977, pursuant to 43 CFR 3833.1-2(a). On December 16, 1977, BLM wrote Scott to furnish him the nine serial numbers it had assigned.

BLM's records contain no further filings from Scott until October 15 and 30, 1979, when he filed copies of proofs of labor for the 1978-1979 assessment year. Scott filed copies of similar proofs of labor for the 1979-1980 assessment year on December 1, 1980.

On April 20, 1981, BLM issued two decisions voiding these claims. The first, citing 43 CFR 3833.2-1, declared four of them (AMC 17761 through AMC 17768) null and void because Scott did not file proofs of labor "prior to December 30 of each year following the calendar year in which such claims were located." (Emphasis added.) The second decision, citing the same regulation, declared the fifth claim (AMC 17769) null and void because Scott (and the other locators 2/) had not filed evidence of annual assessment work prior to December 30, 1978, the calendar year following the calendar year of recording. Scott filed a timely notice of appeal of these decisions.

We note initially that one BLM decision (re AMC 17761 through AMC 17768) erroneously states that 43 CFR 3833.2-1(a) requires that a claimant file evidence of annual assessment work prior to December 30 of each year following the calendar year in which such claims were located. The other decision correctly states the regulatory requirement.

[1] However, we have recently held in Harvey A. Clifton, 60 IBLA 29, 33-34 (1981), that:

> After extensive consideration, this Board is now convinced that the requirement of filing evidence of assessment work or notice of intention to hold with BLM for claims

1/ BLM apparently gave each of the four amended claims a separate number, despite the fact that the amended location notices were designated as such.

2/ Ned V. Scott, Jr., Carol N. Scott, Ray J. Nichols, Curt R. Nichols, Deborah Ann Nichols, Alta Rhea Nichols, and Clyde Tannahill were the locators of the Big Orange Perlite claim (AMC 17769).

> located on or before October 21, 1976, must be met at some point during the 3-year period following enactment of the recordation statute, 43 U.S.C. § 1744 (1976), i.e., by October 22, 1979, and by December 30 of each year following such initial filing of evidence of assessment work or notice of intention to hold. We do not challenge the authority of BLM, asserted in the decision below, to adopt regulations pursuant to the provisions of the Mining Law of 1872, as amended, 30 U.S.C. §§ 22-24, 26-28, 29, 30, 33-35, 37, 39-42 (1976), requiring the owners of unpatented mining claims to file notice of intention to hold or evidence of assessment work with BLM by December 30 of the year following recordation with BLM of the certificate of location. However, we cannot affirm a decision conclusively presuming a claim to be abandoned and thus void in the face of evidence to the contrary where the statutory filing requirements imposed by section 314 of FLPMA have been complied with. This statute imposes a conclusive presumption of abandonment for failure to comply with the filing requirements established therein, notwithstanding evidence showing claimant did not intend to abandon the claim. Lynn Keith, 53 IBLA 192, 196-97, 88 I.D. 369, 372 (1981). With respect to filings that are deficient for failure to conform to the requirements of the regulation, but which meet the statutory requirements of section 314, the deficiency does not give rise to a conclusive presumption of abandonment but rather to a curable defect of which claimant should be given notice and an opportunity to rectify prior to any decision voiding the claim. Heidelberg Silver Mining Co., Inc., 58 IBLA 10, 12 (1981); Ted Dilday, 56 IBLA 337, 341, 88 I.D. 682, (1981); Feldslite Corporation of America, 56 IBLA 78, 81-83, 88 I.D. 643, (1981).

For the amended Longhorn Perlite Nos. 1 through 4 lode, and the Big Orange Perlite placer, mining claims (AMC 17761, AMC 17763, AMC 17765, AMC 17767, and AMC 17769) appellant filed with BLM on October 15, 1979, copies of affidavits of labor performed, and so met the requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976). Harvey A. Clifton, supra at 33. Accordingly, we cannot affirm BLM's decisions conclusively presuming his claims to be abandoned and void, in view of his assertion to the contrary. Id. at 34.

While appellant complied with FLPMA's filing requirements with respect to these claims, he failed to comply with 43 CFR 3833.2-1(a), since he failed to file on or before December 30, 1978, evidence of annual assessment work performed during the preceding assessment year, namely, the year following the year in which he first recorded copies of location notices for the claims. Ordinarily, we would remand the case to BLM to allow the claimant to rectify this deficiency. Ibid. However, it is unnecessary to do so here, because appellant filed, along with his notice of appeal, copies of affidavits of labor

performed on these five claims for the assessment year ending on September 1, 1978, 3/ and, therefore, has already rectified the deficiency.

The record indicates that Longhorn Perlite Nos. 1 through 4 claims (AMC 17761, AMC 17763, AMC 17765, and AMC 17767) were actually amended locations of the Longhorn Nos. 1 through 4 claims (AMC 17762, AMC 17764, AMC 17766, and AMC 17768). The location notices for the former group of claims expressly state that they are "amended" notices of location of mining claims and refer by volume and page number and date of location to the original notices of location of the latter group of claims, identified by BLM serial numbers AMC 17762, AMC 17764, AMC 17766, and AMC 17768. Thus, it appears BLM was in error in recording the even-numbered group of claims as separate claims. The claims as recorded also were accompanied by only a $25 service fee, the proper amount at $5 per claim for the four Longhorn Perlite claims and one Big Orange Perlite claim. 43 CFR 3833.1-2(d). The cover letter with which appellant initially submitted his claims for recordation likewise indicates that only five claims were to be recorded.

An amended location notice, as distinguished from a relocation of a claim, generally relates back to the original location of the claim. See R. Gail Tibbetts, 43 IBLA 210, 214-220, 86 I.D. 538, 540-43 (1979). Proper recording of the amended location of a claim under section 314 of FLPMA establishes compliance with the FLPMA recordation requirements for the claim since the original and amended notices of location must be construed together. R. Gail Tibbetts, supra at 220, 86 I.D. at 543.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decisions are reversed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

3/ Appellant's affidavit states that it covers the assessment year ending on Aug. 31, 1978. The assessment year actually runs from noon ("12 o'clock meridian") on Sept. 1 to noon on the following Sept. 1. 30 U.S.C. § 28 (1976).